

**THE WATERSHED PROTECTION AND DEVELOPMENT REVIEW  
DEPARTMENT RECOMMENDS APPROVAL OF THIS VARIANCE REQUEST.**

**SUMMARY OF FINDINGS:**

1. THE PROPOSED CONSTRUCTION ENCROACHES ON THE 25-YEAR AND 100-YEAR FLOODPLAINS OF HANCOCK BRANCH of SHOAL CREEK.
2. FEASIBLE ACCESS. The depth of water at the curb during the 100-year flood event would be approximately 1.05 ft. The existing house will be surrounded by water depths ranging from 0.45 to 1.25 feet. At these depths, access to this structure by Austin Fire Department vehicles is possible.
3. FINISHED FLOOR ABOVE MINIMUM REQUIRED ELEVATION. The proposed construction *meets* City of Austin minimum elevation requirements. The proposed elevation of the finished floor will be over one-foot above the 100-year floodplain elevation.
4. LIMITED OBSTRUCTION TO THE FLOW OF FLOODWATERS. The structure will be built on piers and the bottom of the floor beams will be above the 100-year floodplain elevation preventing an obstruction to the flow of floodwaters.
5. ADDITIONAL OCCUPANCY IN THE FLOODPLAIN. The proposed construction will increase the opportunity for human occupancy in the floodplain. Living space within the existing home is 615 sq. ft. The proposed structure includes 1585 sq. ft. of conditioned space.
6. NONCONFORMING USE DISCOUNTINUED. The existing nonconforming structure has been vacant for over 90 days. A variance is required to construct a nonconforming structure where a nonconforming use has been discounted in excess of 90 days.
7. ALL PREREQUISITES FOR GRANTING VARIANCE ARE NOT MET. Applicant's variance request is not the minimum necessary to afford relief.

**VARIANCES REQUESTED AND APPLICABLE CODE:**

- I. Section 25-12-3, (*Local Amendment to the Building Code*), Appendix G, Section G102.3 (*Nonconforming Uses*) provides that a structure, or use of a structure or premises, which was lawful before the adoption of the Building Code floodplain regulations but does not conform to the floodplain regulations may be continued, subject to specific conditions, including:
  - (4) Any nonconforming use or structure which is destroyed by means, including fire, to an extent of 50 percent or more of its market value, shall not be reconstructed except in conformance with the provisions of these regulations.

***VARIANCE REQUESTED:*** *The existing, nonconforming structure will be demolished and a new house built. The applicant requests a variance to IBC Section G102.3 (4) to construct a nonconforming residence in the floodplain after demolishing the existing nonconforming structure.*

- II. LDC Section 25-7-92 (A) (*Encroachment on Floodplain Prohibited*) prohibits construction of a building or parking area in the 25-year floodplains.

**VARIANCE REQUESTED:** *The applicant requests a variance from LDC Section 25-7-92(A) to allow construction of the proposed house in the 25-year floodplain.*

- III. Section 25-12-3, Building Code Section 1612.4.3 Means of Egress provides that normal access to a building shall be by direct connection with an area that is a minimum of one foot above the design flood elevation.

**VARIANCE REQUESTED:** *The applicant requests a variance to Building Code Section 1612.4.3, to allow construction of a single-family house without normal access by connection with an area that is a minimum of one foot above the design flood elevation. Access to the residence from Jim Hogg Avenue will be within the 100-year floodplain with a depth of 1.05 feet of water at the curb line and water depths ranging from 0.45 to 1.25 feet around the structure.*

- IV. LDC Section 25-7-152 (Dedication of Easements and Rights-of-way) requires that the owner of real property proposed to be developed dedicate to the public an easement or right-of-way for a drainage facility, open or enclosed, and storm water flow to the limits of the 100-year floodplain.

**VARIANCE REQUESTED:** *The applicant requests a variance to Section 25-7-152(A) to exclude the footprint of the proposed house from the requirement to dedicate a drainage easement.*

- V. LDC Section 25-7-2, Obstruction of Waterways Prohibited prohibits the placement of an obstruction in a waterway.

**VARIANCE REQUESTED:** *The applicant requests a variance to place a duplex residential structure (an obstruction to the flow of floodwaters) in a waterway.*

## **PREREQUISITES FOR GRANTING VARIANCES AND FINDINGS:**

Per LDC Section 25-12-3, Technical Codes, Section G 105 Variances, variances shall only be issued upon an affirmative finding of the five conditions described below:

### **PREREQUISITE**

- 1.) A technical showing of good and sufficient cause based on the unique characteristics of the size, configuration or topography of the site.

*Insufficient causes for issuing a variance may include the following:*

- *Less than a drastic depreciation of property.*
- *Convenience of property owner.*
- *Circumstances of owner not land.*
- *To obtain better financial return.*

### **FINDING**

- 1.) **NOT MET.** The lot is completely in the 100-year floodplain and almost entirely in the 25-year floodplain and unique site size, configuration or topography characteristics have not been demonstrated.

- *Property similar to others in neighborhood.*
- *Hardship created by owner's own actions.*

2.) A determination that failure to grant the variance would result in exceptional hardship by rendering the lot un-developable;

*The location of the floodplain on the property is a characteristic of the land. Hardship refers to the effect of the floodplain status of the land on its use; it does not refer to personal or financial circumstances of the current owner of the land. In fact financial hardship, inconvenience, aesthetic considerations, physical handicaps, personal preferences or the disapproval of one's neighbors do not qualify as exceptional hardships. The applicant has the burden of proving exceptional hardship and has not done so. FEMA advises that the reasons for granting floodplain management variances must be substantial and the proof compelling. The claimed hardship must be exceptional, unusual and peculiar to the property involved.*

3.) A determination that granting of a variance would not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing laws or conflict with existing laws or ordinances.

4.) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

*Relief is defined as respite from unnecessary hardship. Unnecessary hardship is defined as:*

- *Loss of all beneficial or productive use.*
- *Deprivation of reasonable return on*

**2.) NOT MET.** Failure to grant the proposed variance will not necessarily render the lot un-developable. The owner has the future option of requesting a floodplain variance as may be necessary to substantially improve the existing structure which has been substantially damaged through neglect. The existing house may be substantially improved (but not expanded, changed, enlarged or altered in a way which increases its nonconformity) to meet Building Code floodplain requirements with fewer floodplain variance requests than the applicant's current proposal. A future variance request could be made to construct a new home not exceeding the size of the existing home.

**3.) SUBSTANTIALLY MET.** The proposed development does not increase floodplain water-surface elevations. Public safety risk is increased to some degree because up to 1.25 ft. of water in front of the house inundate Jim Hogg Avenue Street during the 100-year event and the proposed increase in floor space offers opportunity for greater occupancy.

**4.) NOT MET.** In this case, the proposed project and variance request is not the minimum required to afford relief. The existing structure is in poor condition and the owner has been advised of significant code violations. Improving the existing structure or constructing a new residence not exceeding the size of the existing residence could be pursued as a means of

- property.*
- *Deprivation of all or any reasonable use.*
  - *Rendering property valueless.*
  - *Inability to develop property in compliance with the regulations.*
  - *Reasonable use cannot be made consistent with the regulation.*
- 5.) Notification to the applicant in writing over the signature of the building official that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance, and that such construction below the base flood level increases risks to life and property.
- minimizing the breadth of the variance requests.
- 5.) **CONDITION IS MET** because the proposed house floor elevation is proposed to be above the required regulatory flood datum (100-year floodplain elevation plus one foot).

## VARIANCE CONDITIONS

In the event that the variance request is granted, the variance is effective only upon the satisfaction of the following conditions:

1. The foundation of the proposed structure shall be pier and beam with the bottom of the lowest floor beam at a minimum elevation of 657.05 ft above Mean Sea Level (MSL) (which is one foot above the 100-year floodplain elevation). The applicant shall submit a completed Elevation Certificate certifying the elevation of the lowest foundation beam is a minimum of one foot above the 100-year floodplain elevation, signed by a Texas registered professional land surveyor, before the City may issue a Certificate of Occupancy for the proposed structure.
2. The applicant must provide a certification by a Texas Registered Professional Engineer or Architect certifying that the proposed structure will withstand the flood forces generated by the 100-year flood and that the design and construction is in accord with the latest edition of the American Society of Civil Engineers Manual 24 (Flood Resistant Design and Construction).